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FILED
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RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE

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9 **UNITED STATES DISTRICT COURT**
 10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 **ROGER SCHLAFLY,**

12 **Plaintiff,**

13 **v.**

14 **PUBLIC KEY PARTNERS and**
 15 **RSA DATA SECURITY, INC.,**

16 **Defendants.**

No. CV 94 20512 SW (PVT)

**REPLY OF DEFENDANT PUBLIC KEY
 PARTNERS TO PLAINTIFF'S
 OPPOSITION TO MOTION FOR
 SUMMARY JUDGMENT**

Date: August 27, 1997

Time: 10:00 a.m.

Dept: 4

Honorable Judge Spencer Williams

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 19 **PRELIMINARY STATEMENT**

20 Over three years after commencing this litigation, plaintiff's opposition reveals that whatever
 21 his theories may be they are wholly lacking in evidentiary support. Facing the challenge of coming
 22 forward with persuasive evidence that genuine factual issues exist, plaintiff resorts to familiar
 23 rhetoric without factual foundation. When pressed for credible evidence in his recent deposition,
 24 plaintiff was utterly unable to support allegations fundamental to his antitrust and unfair business
 25 practices claims. As demonstrated below, plaintiff's opposition utterly fails to make a sufficient
 26

27 **PKP'S REPLY TO PLAINTIFF'S OPPO.**
 28 **TO MOTION FOR SUMMARY JUDGMENT**
CV 94 20512 SW PVT

1 showing on essential elements of plaintiff's case with respect to which plaintiff has the burden. In
 2 these circumstances, entry of summary judgment is appropriate, if not required.

3 ARGUMENT

4 THERE IS NO EVIDENCE TO SUPPORT PLAINTIFF'S CLAIMS 5 UNDER THE UNFAIR BUSINESS ACT BY THESE 6 DEFENDANTS

7 It is undisputed and this Court has recognized¹ that PKP was formed in 1990 for the purpose
 8 of licensing various cryptography patents. Despite plaintiff's unsupported assertions, it is also
 9 undisputed that the licensing policies and practices were nondiscriminatory; that is that PKP patents
 10 were licensed on a nondiscriminatory basis.

11 Plaintiff's opposition consists of allegations that RSA's licensing policy will not allow a
 12 licensee to obtain a product which competes directly with RSA's product, and that some licensees
 13 may have license terms or provisions different than other licensees. As to the first, Exhibit GG to
 14 plaintiff's amended complaint (cited at p. 12, lines 11-18 of plaintiff's opposition) clearly sets forth
 15 RSA's entirely reasonable and permissible policy. As its "basic business is creating toolkit
 16 products" it would make no sense whatsoever to license one who proposes to be a direct competitor.

17 As to discriminatory licensing terms, plaintiff simply has no credible evidence.

18 Plaintiff's assertions concerning a discriminatory licensing policy include statements such as,
 19 "It appears that there are indeed wide disparities, . . . [royalty rates for patent licensees]" and that
 20 certain manufacturers are, ". . . both manufacturing and selling licensed products and giving them
 21 away free apparently without paying any royalty or minimum per unit," and that a particular PKP
 22 licensee has a, ". . . royalty rate . . . apparently somewhere in between . . . [that paid by other
 23

24 ¹Order Denying in Part and Granting in Part PKP's and RSA's Motions for Partial Summary
 25 Judgment on Interference with Contractual Relationship, Unfair Business Practices and Antitrust Claims,
 26 filed herein on February 27, 1996.

1 licensees].” As to each of these licensees plaintiff has conceded we has no knowledge as to the
2 terms of their license agreements. Depo. p. 79.²

3 Indeed, what is entirely clear from his Opposition and his deposition testimony is that
4 Plaintiff simply relies upon rumor, Internet postings and random media offerings to buttress his
5 conclusions. Depo. pp. 43-49. In these proceedings and with the burden Plaintiff must carry, this is
6 simply insufficient.

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8 Dated: August 13, 1997

Respectfully submitted,

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11 THOMAS R. HOGAN

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25 ² Citations to the deposition of plaintiff are simply stated “Depo.”; the transcript is attached to
26 the Declaration of Thomas R. Hogan submitted herewith.